

ORDINANCE NO. 793-81

AN ORDINANCE amending Ordinance No. 555-78 as amended by Ordinance No. 665-80.

WHEREAS, Ordinance No. 555-78 as amended by Ordinance No. 665-80 set forth requirements for property owners to make improvements to City right-of-ways; and

WHEREAS, under certain circumstances, it is to the benefit of the City to allow the property owner to install interim improvements or to deviate from the requirements established in Ordinance No. 555-78 as amended by Ordinance No. 665-80; and

WHEREAS, Ordinance No. 555-78 as amended by Ordinance No. 665-80 provides for procedures for variances and appeals from the requirements and determinations set forth in therein; and

WHEREAS, the City of Everett has adopted Ordinance No. 692-80, establishing a Land Use Hearing Examiner System which grants to the Hearing Examiner the duty of hearing variances and appeals from administrative determinations of the City's streets and sidewalk codes;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: That Section 2 of Ordinance No. 665-80 (amending Section 2 of Ordinance No. 555-78), which reads as follows:

Section 2: Applicability

No building permit shall be issued by the City for construction of any new building or facility of any kind or description, or in connection with any additions, alterations or repairs within any twelve (12) month period which exceeds fifty percent (50%) of the current market value of an existing building or facility on the property, unless or until the public streets and alleys upon which the same abuts shall be improved at the owner(s) expense in accordance with the following requirements:

- A. All business, commercial, industrial, and multiple family residential land uses, shall be required to construct street and/or alley improvements together with all necessary appurtenances: provided, however, at the discretion of the City Engineer when he is satisfied that adequate improvements exist except for nominal lack of street width, a recordable covenant which consents to the formation of a local improvement district (L.I.D.) and constitutes a waiver of protest to the formation of such a local improvement district (hereinafter referred to as "L.I.D. covenant") may be substituted for any and all construction requirements herein. Forms of the L.I.D. covenant shall be provided by the City and approved by the City Attorney.

B. All single family residential uses, up to and including duplexes, triplexes and fourplexes, excluding the addition of a residential garage or carport:

(1) Where in the opinion of the City Engineer, the existing street and alley improvements can adequately serve the property in the short term future, in accordance with the published Administrative Guidelines shall be required to provide a recorded L.I.D. covenant for a local improvement district for construction of street and alley improvements together with all necessary appurtenances.

(2) Where, in the opinion of the City Engineer, the existing street and/or alley improvements are inadequate or no public street and/or alley improvements exist:

a. Where ultimate improvements are, in the opinion of the City Engineer, not desirable due to known or perceived physical problems, or, in the case of unknown plans for more comprehensive improvements, encompassing the public right-of-way abutting the site, the City Engineer may allow that the property owner provide interim improvements as described in Section 1, Paragraph G. In every case where Interim Street Improvements are allowed, the property owner shall provide a recorded L.I.D. covenant, for a local improvement district for construction of street and alley improvements together with all necessary appurtenances.

b. In all other cases of inadequate improvements or no public street or alley improvements, full street and/or alley improvements shall be required.

C. All owners of properties shall dedicate additional rights-of-way as necessary to complete the required street improvements in accordance with City standards; provided, however, that the Developer shall still be required to meet the appropriate setback requirements as well as all other applicable performance standards.

D. All improvements required above shall be extended as necessary to provide a smooth transition with existing improvements, both laterally across the street and longitudinally up and down the street, for drainage, vehicular and pedestrian traffic.

E. For single family residential uses, up to and including duplexes, triplexes and fourplexes, a neighborhood residential street shall be considered adequate as long as the existing character of the surrounding streets and pedestrian facilities consist of an 18 foot asphalt surface and a 3 foot shoulder beyond the hard surface street section. On arterial and high volume residential streets, a 6 foot shoulder shall be deemed as adequate, except where school or neighborhood pedestrian routes exist or are anticipated, sidewalks shall be installed.

is hereby amended to read as follows:

Section 2: Applicability

No building permit shall be issued by the City of Everett for construction of any new building or facility of any kind or description, or in connection

with any additions, alterations or repairs within any twelve (12) month period which exceeds fifty percent (50%) of the current market value of an existing building or facility on the property, unless or until the public streets and alleys upon which the same abuts shall be improved at the owner(s) expense in accordance with the following requirements:

A. All business, commercial, industrial, and multiple family residential (5 units or more) land uses, shall be required to construct street and/or alley improvements together with all necessary appurtenances; provided, that if in the discretion of the City Engineer any of the following conditions are found to exist, the City Engineer may allow the property owner to provide interim improvements as defined in Section 1, Paragraph G herein, or to deviate from the requirements of this ordinance:

1. Where a proposed development is subject to the environmental review process pursuant to the State Environmental Policy Act (SEPA) and Ordinance No. 582-79 as amended, AND conditions have been imposed through the environmental review process which are intended to alter, supplement or replace the requirements of this ordinance.
2. Where a proposed development is determined to be exempt from the requirements of the State Environmental Policy Act and Ordinance No. 582-79 as amended, and where the City Engineer determines that ultimate improvements are not desirable at the present time due to existing severe horizontal or severe vertical grade alignment problems.
3. Where the City Engineer is satisfied that adequate improvements exist except for nominal lacking of street width.
4. Where plans for more comprehensive improvements exist which would alter the ultimate improvements required to be constructed on the public right-of-way abutting the proposed development site.

In every case where interim improvements are allowed, the property owner shall be required to provide a recorded covenant power of attorney to the City of Everett (hereinafter referred to as "LID covenant") in support of a petition local improvement district for construction of street and alley improvements, together with all necessary appurtenances. Forms for the LID covenant shall be provided by the City and approved by the City Attorney.

B. Residential uses, up to and including single family, duplexes, triplexes and fourplexes:

1. Where, in the opinion of the City Engineer, the existing street and alley improvements can adequately serve the property in the short term future, in accordance with the published Administrative Guidelines the requirements shall be to provide a recorded LID covenant for a local improvement district for construction of street and alley improvements together with all necessary appurtenances.
2. Where, in the opinion of the City Engineer, the existing street and/or alley improvements are inadequate or no public street and/or alley improvements exist:
 - a. Where ultimate improvements are, in the opinion of the City Engineer, using reasonable engineering judgment not desirable, or, in the case of known plans

for more comprehensive improvements, encompassing the public right-of-way abutting the site, the City Engineer may allow that the property owner provide interim improvements as defined in Section 1, Paragraph G. In every case where interim street improvements are allowed, the property owner shall provide a recorded LID covenant, for a local improvement district for construction of street and alley improvements together with all necessary appurtenances.

b. In all other cases of inadequate improvements or no public street or alley improvements, full street and/or alley improvements shall be required.

3. Provided, however, the addition of a residential garage or carport shall be exempt from requirements of this ordinance when such construction is an addition to an existing residential use, up to and including single family, duplexes, triplexes, and fourplexes.

C. All owners of properties shall dedicate additional rights-of-way as necessary to complete the required street improvements in accordance with City standards; provided, however, that the Developer shall still be required to meet the appropriate setback requirements as well as all other applicable performance standards.

D. All improvements required above shall be extended as necessary to provide a smooth transition with existing improvements, both laterally across the street and longitudinally up and down the street, for drainage, vehicular and pedestrian traffic.

E. For residential uses, up to and including single family, duplexes, triplexes and fourplexes, a neighborhood residential street shall be considered adequate as long as the existing character of the surrounding streets and pedestrian facilities consist of an 18 foot asphalt surface and a 3 foot shoulder beyond the hard surface street section. On arterial and high volume residential streets, a 6 foot shoulder shall be deemed as adequate, except where school or neighborhood pedestrian routes exist or are anticipated, sidewalks shall be installed.

Section 2: That Section 7 of ordinance No. 665-80 (amending Section 7 of Ordinance No. 555-78), which reads as follows:

Section 7: Variance Procedure

A. Any applicant or department of the City may request a special exception to the Hearing Examiner from any provision of this ordinance. Such request by applicant shall be filed in writing with the City Engineer, there shall be a non-refundable fee of \$50 paid to the City Treasurer to cover the City's cost of handling the request for special exception, except that a department of the City is exempt from the fee. The Hearing Examiner shall consider the proposed variance within thirty (30) days after the City Engineer receives the request.

B. The Hearing Examiner is authorized to grant, in writing, variances from the regulations and requirements of this ordinance, providing

it is first determined that all of the following conditions are present:

- (1) The applicant has completed the environmental review process, under the provisions of the Washington State Environmental Policy Act (S.E.P.A.) and completed any street or traffic related studies required by the review;
- (2) The variance requested arises from peculiar physical conditions not ordinarily existing in similar districts in the City, and that not granting a special exception may aggravate the conditions;
- (3) That the variance requested is not against the public interest, particularly safety, convenience and general welfare;
- (4) That the granting of the variance will not adversely affect the adjacent property owners or tenants;
- (5) That the terms of this ordinance will work unnecessary hardship on the applicant, property owner or tenant. Such hardship shall not be self-imposed.

C. Any applicant or department of the City, aggrieved by a variance decision of the Hearing Examiner may request the City Council to review. Such requests must be made in writing to the Hearing Examiner within thirty (30) days from the date of which the Hearing Examiner presents the applicant with his final decision in writing. City Council shall consider the proposed variance within thirty (30) days after the Hearing Examiner receives the request. The appeal shall be accompanied by a fee of \$50 to be paid to the City Treasurer, except that a department of the City is exempt from the fee. The fee shall be refunded in the event the City Council finds in favor of the applicant. Such request shall be limited to the interpretation of the Hearing Examiner in the application of the provisions of this ordinance and any amendments or additions hereto.

D. In the absence of a Hearing Examiner who has jurisdiction to hear these matters, City Council shall hear variances according to Section 7 A. and B. herein at no fee.

is hereby amended to read as follows:

Section 7: Variance Procedure

A. Any applicant or department of the City may request a special exception to the Hearing Examiner from any provision of this ordinance. Such request by applicant shall be filed in writing with the City Engineer and Secretary of the Hearing Examiner. Such requests must be made in writing to the City Engineer within thirty (30) days from the date on which the City Engineer presents the applicant with his final decision in writing. There shall be a non-refundable fee of \$50 paid to the City Treasurer to cover the City's cost of handling the request for special exception, except that a department of the City is exempt from the fee. The Hearing Examiner shall consider the proposed variance within thirty (30) days after the City Engineer receives the request.

1 B. The Hearing Examiner is authorized to grant, in writing, variances
2 from the regulations and requirements of this ordinance, providing
3 it is first determined that all of the following conditions are
4 present:

- 5 (1) The applicant has completed the environmental review
6 process, under the provisions of the Washington State
7 Environmental Policy Act (S.E.P.A.) and completed any
8 street or traffic related studies required by the review;
- 9 (2) The variance requested arises from peculiar physical
10 conditions not ordinarily existing in similar districts in the
11 City, and that not granting a special exception may aggra-
12 vate the conditions;
- 13 (3) That the variance requested is not against the public
14 interest, particularly safety, convenience and general
15 welfare;
- 16 (4) That the granting of the variance will not adversely affect
17 the adjacent property owners or tenants;
- 18 (5) That the terms of this ordinance will work unnecessary
19 hardship on the applicant, property owner or tenant. Such
20 hardship shall not be self-imposed.

21 C. Any applicant or department of the City aggrieved by a variance
22 decision of the Hearing Examiner may appeal to the City Council
23 pursuant to Section 20 of the Land Use Hearing Examiner
24 Ordinance (Ordinance No. 692-80) and the rules of procedure
25 adopted pursuant thereto.

26 D. In the absence of a Hearing Examiner who has jurisdiction to hear
27 these matters, City Council shall hear variances according to
28 Section 7. A. and B. herein at no fee.

29 Section 3: That Section 8 of Ordinance No. 665-80 (amending Ordinance No.
30 555-78), which reads as follows:

31 Section 8: Appeal Procedure

- 32 A. Any applicant, aggrieved by a decision or interpretation of the City
Engineer may appeal to the Hearing Examiner. Such appeals must
be made in writing to the City Engineer within thirty (30) days
from the date on which the City Engineer presents the applicant
with his final decision in writing. The Hearing Examiner shall
consider the appeal within thirty (30) days after the City Engineer
receives the appeal, provided, the applicant has completed the
environmental review, under the provisions of the Washington State
Environmental Policy Act (S.E.P.A.) and completed any street or
traffic related studies required by the review. Such appeal shall be
limited to the interpretation of the City Engineer in the applica-
tion of the provisions of this ordinance and any amendments or
additions hereto.
- B. Any applicant or department of the City, aggrieved by the decision
of the Hearing Examiner may appeal to the City Council. Such
appeals must be made in writing to the Hearing Examiner within
thirty (30) days from the date on which the Hearing Examiner


1 presents the applicant with his final decision in writing. City
2 Council shall consider the appeal within thirty (30) days after the
3 Hearing Examiner receives the appeal. The appeal shall be
4 accompanied by a fee of \$50 to be paid to the City Treasurer,
5 except that a department of the City is exempt from the fee. The
6 fee shall be refunded in the event the City Council finds in favor of
7 the applicant.

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9 C. In the absence of a Hearing Examiner who has jurisdiction to hear
10 these matters, City Council shall hear appeals according to Section
11 8 A. herein, at no fee.

12 is hereby amended to read as follows:

13 Section 8: Appeal Procedure

- 14 A. Any applicant, aggrieved by a decision or interpretation of the City
15 Engineer may appeal to the Hearing Examiner. Such appeals must
16 be made in writing to the City Engineer within thirty (30) days
17 from the date on which the City Engineer presents the applicant
18 with his final decision in writing. The Hearing Examiner shall
19 consider the appeal within thirty (30) days after the City Engineer
20 receives the appeal, provided, the applicant has completed the
21 environmental review, under the provisions of the Washington
22 State Environmental Policy Act (S.E.P.A.) and completed any
23 street or traffic related studies required by the review. Such
24 appeal shall be limited to the interpretation of the City Engineer in
25 the application of the provisions of this ordinance and any
26 amendments or additions hereto.
- 27 B. Any applicant or department of the City aggrieved by a decision of
28 the Hearing Examiner may appeal to the City Council pursuant to
29 Section 20 of the Land Use Hearing Examiner Ordinance
30 (Ordinance No. 692-80) and the rules of procedure adopted
31 pursuant thereto.
- 32 C. In the absence of a Hearing Examiner who has jurisdiction to hear
these matters, City Council shall hear appeals according to Section
8 A. herein, at no fee.


MAYOR

ATTEST:


CITY CLERK

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Valid: 6-15-81

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